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5 **IN THE SUPREME COURT**
6 **STATE OF ARIZONA**

7 In the Matter of a PETITION) Supreme Court No. R-_____
8 TO AMEND SUPREME COURT)
RULES 32, 45 AND 64) Petition to Amend Supreme Court
Rules 32, 45 and 64

9 Pursuant to Rule 28 of the Rules of the Supreme Court, the State Bar of
10 Arizona ("State Bar") petitions the Arizona Supreme Court to amend Rules 32,
11 45 and 64 of the Rules of the Supreme Court, as set forth in Appendix A,
12 attached hereto.

13 I. Overview and Summary of Proposed Changes

14 The proposed amendments to Supreme Court Rule 32 would add a new
15 State Bar membership class (*emeritus* members), generally prohibit retired
16 members from practicing law in any jurisdiction, waive annual membership fees
17 for certain categories of senior members and impose reduced annual
18 membership fees for some senior active members. The proposed amendments to
19 Supreme Court Rule 45 would establish continuing legal education requirements
20 for active members who have attained the age of seventy, modify the exemptions

1 from mandatory continuing legal education (“MCLE”), establish requirements
2 for inactive, retired and *emeritus* members to return to active status with the
3 State Bar, and modify the requirements for summarily suspended members to
4 return to active status. The proposed amendment to Supreme Court Rule 64
5 would require members summarily suspended by the Board of Governors of the
6 State Bar (“Board of Governors”) to submit additional information (proof of
7 compliance with the mandatory continuing legal education requirements during
8 the period of suspension) with their applications for reinstatement.

9 A. Rule 32 – Classes of Members and Annual Membership Fee

10 1. Classes of Members and Reinstatement from Resigned Status

11 The proposed amendment to Rule 32 would add an *emeritus* class to the
12 five classes of State Bar membership that currently exist. *Emeritus* membership
13 would be available only to those persons who have attained the age of 70, and
14 who have been active and/or judicial members of the State Bar for at least 25
15 years. An active, inactive, judicial or retired member who satisfies the criteria
16 for *emeritus* membership status could transfer to such status upon written
17 request to the executive director of the State Bar. *Emeritus* members would be
18 prohibited from practicing law in any state, district, or territory of the United
19 States, with the exception that they would be permitted to provide volunteer
20 legal services to approved legal services organizations as defined in Supreme

1 Court Rule 38(e) (even if they have not engaged in the active practice of law
2 within the preceding five years, as required by Rule 38(e)(2)(B)(1) or Rule
3 38(e)(3)(A)). They would not, however, have to pay annual membership fees.
4 The proposed rule would continue to permit members to transfer to retired status
5 at any age, but *emeritus* members would have to be at least 70 years of age.

6 The current rule prohibits retired members from practicing law in Arizona.
7 The proposed amendments would prohibit retired members from practicing law
8 in any state, district, or territory of the United States, although they would be
9 permitted to provide volunteer legal services to approved legal services
10 organizations as defined in Supreme Court Rule 38(e) (even if they have not
11 engaged in the active practice of law within the preceding five years as required
12 by Supreme Court Rule 38(e)(2)(B)(1) or Rule 38(e)(3)(A)). The broader
13 prohibition in the proposed rule would ensure that retired members are truly
14 retired from the practice of law, and not merely inactive members who are
15 practicing in other jurisdictions.

16 The proposed rule would also explicitly state that members who have
17 resigned from the State Bar are no longer members of the bar.¹ Under the

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19 ¹ Current Supreme Court Rule 32(c)(10), states that members in good standing who have
20 resigned from membership in the State Bar shall be known as "resigned member[s] in good
standing." "Resigned member," however, is not a class of membership set forth in current
Supreme Court Rule 32(c)(1).

1 proposed rule, members who resign in good standing who wish to return to
2 active, inactive or judicial membership status would be required to apply for
3 admission and pass the bar examination as required by Supreme Court Rule 33.²

4 A resigned person who applies for reinstatement would also have to pay the
5 fees required of an applicant for original admission to the bar. These changes
6 are necessary to ensure that members who have resigned continue to meet the
7 knowledge and character and fitness requirements of members of the State Bar.

8 2. Annual Membership Fees

9 The proposed amendments to Supreme Court Rule 32 would give the
10 Board of Governors the authority, with the consent of the Supreme Court, to
11 establish an annual membership fee for retired members as well as active,
12 inactive and judicial members. The following members would be exempt from
13 paying annual membership fees: (1) active members who have attained the age
14 of 70 prior to January 1, 2009; (2) members who have attained the age of 75 and
15 who have been active and/or judicial members of the State Bar for at least 25
16 years; and (3) *emeritus* members. Active members over the age of 70, who are
17 not exempt from the payment of annual membership fees, would have to pay the

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19 ² Supreme Court Rule 33 states, in part, "No person shall practice law in the State of Arizona
20 without being admitted to the bar by compliance with the following [Supreme Court] rules,"
which require persons interested in becoming members of the State Bar to apply for
membership and pass the bar examination.

1 same (reduced) annual membership fees as active members of the Young
2 Lawyers Division. The payment of reduced annual membership fees for some
3 active members over the age of 70 would help offset the cost of providing
4 various State Bar programs and services to which they are entitled or should
5 contribute (including lawyer regulation and mandatory continuing legal
6 education—*see infra* for information regarding the proposed MCLE rule for
7 members over the age of 70).

8 The requirement that some active members over the age of 70 would have
9 to pay annual membership fees is a change from the State Bar's informal policy
10 of more than 45 years of waiving annual membership fees for senior active
11 members. From 1961 through 1997, members at least 75 years of age did not
12 have to pay annual membership fees. In 1997, the age was lowered to 70.³ The
13 Board of Governors determined that this long-standing policy⁴ needed to be
14

15 ³ Several past presidents of the State Bar and members of the Board of Governors of the State
16 Bar recalled that the rationale for lowering the senior dues exemption from 75 to 70 was to
17 make it consistent with the mandatory age for judicial retirement provided in Arizona
Constitution Art. 6, Sec. 39, which states in part: "On attaining the age of seventy years a
justice or judge of a court of record shall retire and his judicial office shall be vacant, except
as otherwise provided in section 35 of this article."

18 ⁴ A November 9, 2005, report from State Bar Resource Director Betty Flores, states: "The
19 SBA staff has done extension [sic] research for any information regarding a dues exemption
20 of members age 70 and over. Although we were unable to locate any Supreme Court rule or
Board minutes that exempts this category of members, attached are the State Bar membership
distribution reports from 1961 and 1962 referencing an exemption of members 75 years and
older. All distribution [sic] reports after 1964 include an Over 75 Years category.
Additionally, [State Bar employee] Carrie [Sherman] found dues statements from 1984 and

1 revisited, modified and incorporated, as modified, into a Supreme Court rule due
2 to the rapidly changing demographics of the Bar's active membership, discussed
3 *infra*.

4 The 2005 State Bar study considered the “graying of the bar” — a term
5 used to describe the fact that attorneys are living longer and practicing longer.
6 The study concluded there will be, during the next decade, an increase in the
7 number of senior members due to the aging of “baby boomers.”

8 In late-2005, the Board of Governors filed a petition with the Supreme
9 Court to eliminate the senior dues exemption policy (Supreme Court No. R05-
10 0034). The Board of Governors subsequently withdrew that petition, however,
11 based upon numerous objections from senior members of the State Bar.

12 The State Bar staff has recently examined membership records and made
13 projections about the number of members that have attained and will attain age
14 70 from 2000 through 2024. The data indicates that the number of members
15 turning 70 per year will increase gradually from 2009 (116 members) to 2012
16 (185 members), and that a more rapid increase will occur beginning in 2013
17 (256 members).

18 The proposed rule would also clarify the Board of Governors’ authority to

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20 1988 exempting members 75 years and older. The language on the 1988 dues statement is as
follows: “ACTIVE MEMBER reaching the age of 75 years on or before December 31, 1987 .
... \$0.00.”

1 waive annual membership fees due to personal hardship. Current Supreme
2 Court Rule 32(c)(6) permits the Board of Governors to waive, “for reasons of
3 personal hardship,” the annual membership fees of members who are required to
4 pay them. The proposed amendments would clarify that “personal hardship”
5 does “not include failure of the member to calendar the deadline, failure of the
6 member to promptly notify the bar of a change in the member’s mailing address,
7 or the member’s delegation of the responsibility to another person.”

8 B. Rule 45 – Mandatory Continuing Legal Education

9 Under the current rule, an active member who is at least 70 years old or
10 who has been a member for at least 45 years is exempt from the requirements of
11 mandatory continuing legal education. The proposed amendments to Supreme
12 Court Rule 45 would require certain senior members of the State Bar to
13 complete a reduced level of continuing legal education. The rule would require
14 active members who have attained the age of 70 to complete a minimum of ten
15 hours of continuing legal education activity each educational year, at least two
16 of which would have to be in the area of professional responsibility. The
17 proposed rule would help ensure that active members over the age of 70 will
18 maintain a minimal level of competence in the law.

19 The proposed amendments to Supreme Court Rule 45 would exempt
20 inactive, retired and *emeritus* members of the bar from the requirements of

1 mandatory continuing legal education, whether they were inactive, retired or
2 *emeritus* members during the entire educational year or transferred to such
3 membership status during the educational year.

4 The proposed amendments also address the return of inactive, retired and
5 *emeritus* members to active status with the State Bar. Under the proposal,
6 inactive, retired and *emeritus* members could transfer back to active status if
7 they can show completion of the same number of hours of continuing legal
8 education activity that was required of active members for each of the last two
9 years for which the member was on inactive, retired or *emeritus* status. That
10 requirement would help ensure that such members have maintained a minimal
11 level of competence while not an active member of the State Bar. That, in turn,
12 will help protect the public from incompetent legal advice.

13 The proposed rule would also require all inactive, retired, *emeritus* and
14 judicial members who transfer to active status to comply with the educational
15 requirements of active members in effect for the educational year in which the
16 transfer occurs.

17 C. Rule 64 – Reinstatement After Summary Suspension

18 The proposed amendment to Supreme Court Rule 64 would require
19 summarily suspended members who wish to return to active status to prove
20 completion of any hours of continuing legal education activity they would have

1 been required to complete had they remained an active member. That
2 requirement would be in addition to the requirements that applicants prove they
3 have cured the grounds upon which the suspension order was entered and pay
4 certain fees (including reinstatement, delinquency and late fees), assessments,
5 and administrative costs. The requirement that summarily suspended members
6 prove completion of continuing legal education activity will help ensure that
7 applicants for reinstatement have maintained a minimal level of competence
8 during the period of suspension, which will help protect the public from
9 incompetent legal advice. Proof of a minimal level of competence through
10 compliance with continuing legal education requirements is necessary because
11 some summarily suspended members have waited years before seeking
12 reinstatement.

13 II. Text of Proposed Rule Change

14 The text of the proposed rule changes is attached hereto as Appendix A.
15 The changes are shown in legislative format, with additions shown by a double
16 underline, and deletions shown by strike-throughs.

17 III. Conclusion

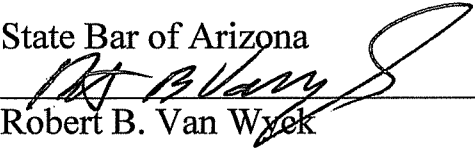
18 For the reasons set forth above, the State Bar of Arizona respectfully
19 petitions this Court to amend Rules 32, 45 and 64 of the Rules of the Supreme

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1 Court, as set forth in Appendix A.

2 Respectfully submitted this 21st day of December, 2007.

3 State Bar of Arizona

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Robert B. Van Wyk

5 Chief Bar Counsel

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7 Electronic copy filed with the
8 Clerk of the Supreme Court of Arizona
this 21st day of December, 2007.

9 by: Nedra Brown

Appendix A

Rule 32. Organization of State Bar of Arizona

(a) – (b) [no changes]

(c) Membership.

1. *Classes of Members.* Members of the state bar shall be divided into ~~five~~ six classes: active, inactive, emeritus, retired, suspended, and judicial. ~~A disbarred or resigned person is~~ are not a member of the bar.
2. *Active Members.* [No change]
3. *Admission and Fees.* [No change]
4. *Inactive Members; ~~Retired Members.~~* Inactive members shall be those who have, as provided in these rules, been transferred to inactive status. An active member who ~~has retired from or~~ is not engaged in practice in Arizona may be transferred to inactive status upon written request to the executive director. Inactive members shall not practice law in Arizona, or hold office in the State Bar or vote in State Bar elections. On application and payment of the membership fee and any delinquent fees that may be due under Rule 45(d), they may become active members. Inactive members shall have such other privileges, not inconsistent with these rules, as the Board may provide. Incapacitated members may be transferred to disability inactive status and returned to active status as provided in these rules.
5. *Retired Members.* Retired members shall be those who have, as provided in these rules, been transferred to retired status. An active, inactive or judicial retired member who is not engaged in active practice in Arizona any state, district, or territory of the United States may be transferred to retired status upon written request to the executive director. Retired members shall not practice law in Arizona, or hold State Bar office or vote in State Bar elections. Retired members shall not practice law in any state, district, or territory of the United States. Notwithstanding

that, retired members may provide volunteer legal services to approved legal services organizations as defined in Rule 38(e) of these rules, except that retired members need not have engaged in the active practice of law within the last five years as required in Rule 38(e)(2)(B)(1) or Rule 38(e)(3)(A). Retired members may return to active, inactive or judicial status upon written request to the executive director. On application and payment of the required membership fee and any delinquent fees satisfaction of all requirements that may be due imposed under Rule 45(d), they may become active members. Retired members shall have other privileges, not inconsistent with these rules, as the Board may provide. If the retired member has not attained the age of 70, a nominal fee, if any, may be set by the Board. Incapacitated members may be transferred to disability inactive status and return to active status as provided in these rules.

6. *Emeritus Members.* Emeritus membership shall be available only to those persons who have attained the age of 70, and who have been active and/or judicial members of the State Bar for at least 25 years. An active, inactive, judicial or retired member who satisfies those criteria may transfer to *emeritus* status upon written request to the executive director. Emeritus members shall not be subject to the payment of annual dues. Emeritus members shall not practice law in any state, district, or territory of the United States. Notwithstanding that, *emeritus* members may provide volunteer legal services to approved legal services organizations as defined in Rule 38(e) of these rules, except that they need not have engaged in the active practice of law within the last five years as required by Rule 38(e)(2)(B)(1) or Rule 38(e)(3)(A).

57. *Judicial Members.* [No change]

68. *Membership Fees.* An annual membership fee for active members, inactive members, retired members and judicial members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. No annual fee shall be established for, or assessed to, (A) active members who have attained the age of 70 prior to January 1, 2009, (B) members who have attained the age of 75 and who have been active and/or judicial members of the State Bar for at least

25 years, or (C) *emeritus* members. The annual fee established for active members over the age of 70, who are not exempt, shall be the same as for active members of the Young Lawyers Division. The annual fee shall be waived for members on disability inactive status pursuant to Rule 5963. Upon application, the Board of Governors may waive the dues of any other member for reasons of personal hardship. Personal hardship shall not include failure of the member to calendar the deadline, failure of the member to promptly notify the bar of a change in the member's mailing address, or the member's delegation of the responsibility to another person.

79. *Computation of fee.* The annual membership fee shall be composed of an amount for the operation of the activities of the state bar and an amount for funding the Client Protection Fund, each of which amounts shall be stated and accounted for separately. Each active and inactive member, who is not exempt, shall pay the annual Fund assessment set by the court, to the state bar together with the annual membership fee, and the state bar shall transfer the fund assessment to the trust established for the administration of the eClient Protection Fund.

810. *Allocation of fee.* Upon payment of the membership fee, each member shall receive a ~~certification~~ bar card issued by the board evidencing payment. All fees shall be paid into the treasury of the state bar and, when so paid, shall become part of its funds, except that portion of the fees representing the amount for the funding of the Client Protection Fund shall be paid into the trust established for the administration of the Client Protection Fund.

911. *Delinquent Fees.* [No change]

1012. *Resignation.*

A. Members in good standing who wish to resign from membership in the state bar may do so, and such resignation shall become effective when filed in the office of the state bar, accepted by the board, and approved by this court. After the resignation is approved by this court, such ~~member person's~~ status shall be ~~known~~ changed to as a "resigned member in

good standing.”

AB. Such resignation shall not be a bar to the institution of subsequent discipline proceedings for any conduct of the resigned ~~member~~ person occurring prior to the resignation. In the event such resigned ~~member~~ person thereafter is disbarred, suspended or censured, the resigned ~~member's~~ person's status shall be changed from “resigned ~~member~~ in good standing” to that of a person so disciplined. Such resignation shall not be accepted if there is a disciplinary charge or complaint pending against the member.

BC. In order to return to active, inactive or judicial membership status, Resigned members persons in good standing shall be required to apply for admission and pass the bar examination as required by Rule 33 of these rules. The applicant shall pay the fees required of an applicant for original admission to the bar. ~~may be reinstated to membership in the same manner and on the same terms as members suspended for nonpayment of membership fees.~~

CD. A member wishing to resign shall apply on a form approved by the board and shall furnish such information as is required upon such form and shall make such allegations, under oath, as are required on such form.

1113. *Insurance Disclosure.* [No change]

(d) – (l) [No changes]

Rule 45. Mandatory Continuing Legal Education

(a) Continuing Legal Education Requirements.

1. [No change]
2. [No change]
3. [No change]

4. Notwithstanding the provisions of subsection (a)(1) of this rule, active members who have attained the age of 70 shall thereafter complete a minimum of ten hours of continuing legal education activity, at least two of which shall be in the area of professional responsibility, in each educational year in which they maintain active member status.

(b) Exemptions.

1. Inactive, Retired and Emeritus Members. An inactive, retired or *emeritus* member of the bar shall be exempt from the requirements of section (a), if the lawyer is inactive, retired or in *emeritus member status* during the entire educational year. An active member who transfers to inactive, retired or *emeritus* status is exempt during the educational year in which the transfer occurs. ~~An inactive member who transfers to active status shall comply with the educational requirements of section (a) in effect for the educational year in which he or she transfers to active status.~~
2. [No change]
3. ~~Active Members at Least 70 Years Old. An active member who is at least 70 years old or who will have been a member for at least 45 years prior to June 30 shall be exempt from the requirements of section (a) for the educational year in question.~~
43. New Admittees. [No change]
54. Out-of-State Compliance. [No change]
65. Other Exemptions. [No change]

(c) - (d) [No changes]

(e) Status Changes.

1. Return from Inactive, Retired or Emeritus Status to Active Status. Prior to a member being permitted to change that member's status from inactive, retired or *emeritus* to active, that member must show

completion of hours of continuing legal education activity equivalent to those required in section (a) of this rule for each of the last two years for which the member was on inactive, retired or *emeritus* status.

2. Any inactive, retired, *emeritus* or judicial member who transfers to active status shall comply with the educational requirements of section (a) of this rule in effect for the educational year in which such transfer occurs.

~~(e)~~(f) **Records.** [No change]

~~(f)~~(g) **Audits of Compliance.** [No change]

~~(g)~~(h) **Regulation Authority.** [No change]

~~(h)~~(i) **Summary Suspension.** Upon notice of the state bar pursuant to ~~Rule~~ 62, any member who fails to comply with this rule for any educational year in which he or she was an active member and not otherwise exempted may be summarily suspended by order of the board, provided that a notice by certified mail, return receipt requested, of such noncompliance shall have been sent to the member, mailed to his or her last address of record in the State Bar office, at least ~~thirty~~ 30 days prior to such suspension, but may be reinstated upon completion of the continuing legal education activity requirements for ~~the~~ each educational year in ~~question~~ which the member was suspended with proof of cure, payment of a reinstatement fee of \$100.00, all delinquency fees pursuant to section (d) of this rule and in accordance with Rule 64(f) of these rules.

~~(i)~~ — [Deleted Dec. 12, 1991, effective Jan. 1, 1992].

(j) - (k) [No changes]

Rule 64. Reinstatement; Eligibility

(a) - (e) [No changes]

(f) **Reinstatement After Summary Suspension by the Board of**

Governors. The application of a member summarily suspended shall be filed within two years from the effective date of the suspension and be accompanied by: (1) proof of cure of the grounds upon which the suspension order was entered, (2) and by payment equal to the amount of fees, assessments, and administrative costs, if any, the applicant would have been required to pay had the applicant remained an active member to the date of the application, plus the one hundred dollar (\$100.00) reinstatement fee and any applicable delinquency or late fees, and (3) proof of completion of any hours of continuing legal education activity required had the applicant remained an active member to the date of the application. A timely filed application shall be addresses to and be considered by the board. Upon verification of compliance, the board shall enter an order of reinstatement. If an application is not filed within two years from the effective date of suspension, the reinstatement procedure set forth in Rule 65 of these rules shall apply.